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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES, INC.  
PASSENGER SEXUAL ASSAULT  
LITIGATION

Case No. 3:23-md-03084-CRB

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS UBER TECHNOLOGIES,  
INC., RASIER, LLC, AND RASIER-CA,  
LLC'S MOTION TO DISMISS CASES FOR  
FAILURE TO COMPLY WITH COURT  
ORDER**

This Document Relates to:

K.C. v. Uber Technologies, Inc., et al., No.  
3:25-cv-05720-CRB

Judge: Hon. Charles R. Breyer  
Courtroom: 6 – 17<sup>th</sup> Floor

**I. INTRODUCTION**

On September 26, 2025, Defendants filed a Motion to Dismiss cases of Plaintiffs who did not file a Plaintiff Fact Sheet (“PFS”) in connection with Pretrial Order (“PTO”) 10. (Doc. 3493). Counsel acknowledges and understands that under PTO 10, the Court created procedures and deadlines to produce a PFS. Counsel has and continues to diligently comply with discovery obligations. Plaintiffs can become unavailable for a variety of reasons during litigation, especially when said Plaintiff is the survivor of a sexual assault.

Counsel continues to make diligent efforts to obtain a completed Plaintiff Fact Sheet (“PFS”) from Plaintiff K.C. The client has historically been responsive; however, communication has recently

1 become intermittent. Counsel last successfully communicated with Plaintiff last month regarding the  
2 PFS, at which time Plaintiff expressed a clear intention to comply with Court procedures and deadlines.  
3 Since that communication, Plaintiff’s current telephone number has been disconnected, preventing  
4 further contact. Counsel will continue to make reasonable and diligent efforts to reestablish  
5 communication with Plaintiff to facilitate the completion and submission of her PFS.  
6

## 7 8 II. ARGUMENT

### 9 a. *The Court should deny Uber’s Motion to Dismiss as procedurally improper.*

10 Rule 37 supplies the Court with a panoply of options for dealing with discovery disputes. Within  
11 that rubric, dismissal – let alone dismiss with prejudice – is the most “drastic sanction” that due process  
12 reserves for “non-compliance...due to willfulness, fault or bad faith” alone. *Signal v. Mendoza*, 642  
13 F.2d 309, 310 (9th Circ. 1981). Uber has not even tried to make the requisite showing of “flagrant  
14 disregard” here, which dooms their motion and the bespoke procedure it envisions. *Id.* (citation  
15 omitted). Uber could have developed an appropriate record in support of its position had it followed  
16 proper procedure and sought an Order to Show Cause. Instead, Defendants prematurely filed the present  
17 motion, which must therefore be denied.  
18

### 19 b. *The Court should not dismiss this case with prejudice.*

20 In the event the Court is inclined to grant Uber’s Motion to Dismiss, it cannot dismiss with  
21 prejudice in this context. Dismissing with prejudice goes against the *Malone* factors as discussed by  
22 Uber and other Plaintiffs’ firms in response to the Motion to Dismiss. Here, Plaintiffs state the quiet out  
23 loud: dismissing with prejudice is premature as these are survivors of sexual assault speaking out against  
24 one of the largest corporations on the planet. While the appropriate safeguards to discovery must be  
25 followed for the truth-seeking process, the practical reality is that these humans have suffered grave  
26  
27  
28

1 harm but are not part of the current bellwether trial. There is no real prejudice to Uber that warrants  
2 dismissal with prejudice. Meanwhile, the process of producing a PFS is a multifaceted task that requires  
3 a survivor to confront their traumatizing experience head on and it is often uncomfortable and  
4 overwhelming. Counsel will continue its efforts with Plaintiff K.C. to produce their PFS.  
5

### 6 7 III. CONCLUSION

8 For the foregoing reasons, Plaintiffs respectfully request this Court DENY Uber's Motion to  
9 Dismiss as procedurally improper. In the alternative, counsel requests the Plaintiff K.C. not be dismissed  
10 with prejudice.  
11

12 Dated: October 10, 2025

Respectfully submitted,

14 /s/ Sommer D. Luther  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2025, I electronically filed the following with the Clerk of the Court using the CM/ECF system, which will send notification of such filing via electronic mail to all counsel of record as maintained in the CM/ECF electronic system.

Dated: October 10, 2025

*/s/ Sommer D. Luther*  
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**PROOF OF SERVICE**

I, the undersigned, declare: I am a citizen of the United States, over 18 years of age and not a party to the within action. My business mailing address is 940 Lincoln Street, Denver, CO 80203.

On the date specified below, I served a copy of the foregoing document described as:

**PLAINTIFFS' RESPONSE TO UBER'S MOTION TO DISMISS CASES FOR FAILURE TO COMPLY WITH COURT ORDER**

To be served by providing a true copy thereof addressed to each of the persons named below:

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5 **[X] BY ELECTRONIC TRANSMISSION ONLY:** By emailing the document(s) to the persons at  
the email address(es) listed above. No electronic message or other indication that the transmission  
6 was unsuccessful was received within a reasonable time after the transmission.

7 I declare under penalty of perjury under the laws of the State of California that the above is true and  
correct.  
8

9 Executed October 10, 2025 in Denver, Colorado.

10  
11 /s/ Theresa Fryan\_\_\_\_\_

12 Theresa Fryan  
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